

Application No. 10/809,443  
Amendment dated August 4  
Response to Office Action dated April 4, 2006

## **AMENDMENTS TO THE DRAWINGS**

Applicant submits herewith, attached at Tab A, 22 replacement drawing sheets.

## **REMARKS**

### **Status of Claims:**

Claims 117-136 are pending in the application. Each of the pending claims defines an invention that is novel and unobvious over the cited art. Favorable consideration of this case is respectfully requested.

### **Rejections Under 35 U.S.C. § 112, 1<sup>st</sup> Paragraph:**

Claims 117-136 were rejected under 35 U.S.C. § 112, 1<sup>st</sup> Paragraph, as containing subject matter which was not described in the specifications in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention.

Support for the various recitations is provided in the figures as discussed below. The new figures do not comprise new matter.

### **Disclosure Supporting the various Claims:**

117. A computer based method for testing the cognitive performance of at least one examinee comprising:  
providing to at least one examinee at least one measurement-session comprising a plurality of response-series comprising a plurality of responses; and  
providing a computer-generated instruction that said examinee respond rapidly to a test stimulus so that at least a minimum number of errors is made.

Support for Claim 117 is provided in code lines 6750-6757 of the original code submitted with the application that is now US 6,712,615 B2. These lines are part of the code for the file named Crtinst3.htm, which offer instructions to examinees before they begin measurement. (Crtinst stands for Choice Reaction Time Instructions.)

This code causes the following text to be displayed to the examinee:

"For high-precision measurement, respond rapidly enough to make 3 to 7 errors for each twenty responses. Errors are important because they provide information about accuracy as well as speed. Don't mind errors -- they are needed for rigorous response time comparison from one visit to the next.

<p>

Rest your fingers between each series of 20 and check your error rate to see if it is too low or high. Adjust your speed so that your error rate stays within between 3 and 7."

Support for the aspect of Claim 117 related to a minimum number of errors is also provided in the original patent specification (now US 6,712,615 B2) in claim 15:

"15. A computer based method for testing the cognitive performance of at least one examinee, according to claim 6, wherein users are asked to maintain an error rate above a minimum AND below a maximum and thereby to control the response speed/accuracy tradeoff more precisely than if either limit were omitted."

Further support for Claim 117 is also provided within the Summary of Invention of US 6,712,615 B2 column 8 lines 7-10:

According to an aspect of the invention, a response time measurement system is provided that instructs users to remain above a minimum error rate and/or specifies a relatively narrow range of recommended error rates.

Additional support is provided in the Detailed Description of a Preferred Embodiment of US 6,712,615 B2 column 9 lines 39-55 (bold lines 46-47)

"If users cannot reduce response times to match those obtained previously because they are in fact slower during the present measurement session, they invariably try harder and their error rate increases, so that different points on the speed/accuracy tradeoff curve are explored within each measurement session. Trying different speeds and error rates, back and forth until previous error rates are matched, with explicit instructions that error rates should never be less than a minimum or greater than a maximum, essentially ensures that at least some data are obtained during past and present measurement sessions with the same or very similar degrees of accuracy. Much more precise comparison of past and present results is consequently possible. Concentration, alertness, determination to succeed typically rise sharply when users realize they are not performing up to par--so decrements due to reduced alertness are overcome and differences from previous sessions are reduced."

And yet more support is provided by the discussion of Step 1 of US 6,712,615 B2 column 14 lines 48-51:

Maintaining a finite, non-zero error rate is an aspect of the invention. Subjects are instructed to maintain responses within a limited range of error. A minimum error rate must be maintained.

118. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, wherein said instruction is provided prior to a response-series.

Support for Claim 118 is provided by code lines 1681-1685:

```
function instructions(){  
top.window.fl.instrPopUp=0;  
var ins=window.open('CRTINST3.HTM',"subWindow", "scrollbars=yes,resizable")  
}
```

And also code lines 2840-2841:

```
<a href='javascript:instructions()'><font size=2><b>Instructions</b></font>
```

Together these lines of code cause examinees to see a prominent button within the initial page view of the Choice Reaction Time measurement page. This button leads to the instructions page which explains the need for a minimum number of errors.

Furthermore code lines 1736-1748 cause display of messages after one response series has ended but BEFORE the next response series begins that emphasize the need for greater speed and more accompanying errors. These messages appear ONLY if the number of errors is below the minimum acceptable number.

The text of these error-related messages reads:

You made [no reponse errors|1 response error] during your last 20 responses. Your response speed will improve if you respond quickly enough to make several errors. We recommend aiming for 2 to 5 errors during each set of 20 responses.

119. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, further comprising:

determining a number of errors made by said examinee in a response-series; and

displaying a computer-generated instruction to increase a response speed of said examinee when said number of errors is less than a minimum number of errors within said response-series.

Support for Claim 119 is provided by code lines 1736-1748 as described above for Claim 118:

```
var minerrors = qlimit/10
var maxerrors = qlimit/4
errorTally=""
if (errors<minerrors){
var words="+errors
if (errors==0){words='no response errors'}
if (errors==1){words='1 response error'}
if (errors>1){words="+errors+' response errors'}
msg='You made '+words+' during your last '+qlimit+' responses. Your response speed will
improve if you respond quickly enough to make '
msg+='several errors. We recommend aiming for '+minerrors+' to '+maxerrors+' errors during
each set of '+qlimit+' responses.'
alert(msg)}else{ ...
```

Claim 120. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, wherein said response-series comprises from about 15->20 to about 30->40 responses.

Support for this range of responses is provided by code lines 1667-1671 & 11438-11442. This code allows examinees to change the "qlimit" (question limit) variable to set their own preferred number of responses within each response series. Examinees will naturally remain within the lower range of available options to reduce the work they must perform during each measurement session, so a relatively low range like 30 responses seems appropriate. In fact, users tend overwhelmingly to remain at the default number of 20 responses for each response series.

```
function setQLimit(qlim){qlimit=qlim; qlimitOrig=qlim; qLimStr=prompt('Questions will  
appear in groups of '+qlimit+'. Enter any other multiple of 20 if you wish, or simply press  
OK.',''); if (qLimStr==null){qLimStr=""; if (qLimStr.length>4){qlimit=parseFloat(qLimStr); ;  
ctrlmsg+="Qs="+qLimStr; qLimitOrig=qlimit}}
```

Also 1394-5 and 11149-50

```
qlimit=20  
qlimitOrig = 20
```

Claim 121. Support for this claim is provided in code lines 11524-11525:

```
var minerrors = qlimit/10  
var maxerrors = qlimit/4
```

and also on line 11527 if (errors<minerrors){.

Since qlimit can vary from 20 on up, minerrors (the minimum number of acceptable errors) will vary among from 2, 3, 4 ... depending on the value of qlimit, and therefore the trigger point for messages about errors will be at errors<minerrors or errors<(20/2) or errors<2. Errors < 2 will be either 1 or 0 errors, so the claim reference to the group consisting of 1,2,3,4, and 5 seems appropriate.

Claim 122. This claim is supported by code line 1736:

`var minerrors = qlimit/10`

Divided by 10 is equivalent to 10%.

Support for a higher minimum error limit (over 10%) is available in another preferred embodiment, the original code for which is located at lines 6752-6754: "Rest your fingers between each series of 20 and check your error rate to see if it is too low or high. Adjust your speed so that your error rate stays within between 3 and 7"

Claim 123. Support for claim 123 is provided in code lines 1739-1748 as previously discussed.

```
if (errors<minerrors){  
var words="+errors  
if (errors==0){words='no response errors'}  
if (errors==1){words='1 response error'}  
if (errors>1){words="+errors+' response errors'}  
msg='You made '+words+' during your last '+qlimit+' responses. Your response speed will  
improve if you respond quickly enough to make '  
msg+='several errors. We recommend aiming for '+minerrors+' to '+maxerrors+' errors during  
each set of '+qlimit+' responses.'  
alert(msg)}}]
```

Claim 124. Support for claim 124 is provided in code lines 5357-5359 which read text information about potential health factors (foods) from the text entry area into which it was placed:



```
if (document.F.Sunday1Food.value.length>2){  
document.F.factorData.value+='<<'+10000000+'<'+document.F.Sunday1Food.value
```

determining a performance score by said examinee; and

Support for the next (above) clause in this claim is provided in code lines 5360-5365 which read in performance measures:

```
if  
((how==1)||how==2)){document.F.performanceData.value+='<'+10000000+'<'+document.F.Sunday1Measure.value} else  
{document.F.performanceData.value+='<'+10000000+'<'+document.F.Sunday1Measure2.value  
}  
}
```

correlating said score with said at least one health-related word.

This is accomplished over many lines of code by the following four functions:

A) In code lines 5804-5863:

distributePerfData(how) - which calculates performance changes or "deltas" in accordance with time-slice method of analysis chosen and represented by the variable "how".

B) In code lines 5762-5793:

distributeFactorLists() - which distributes the textblob of times and factors into appropriate variables.

C) In code lines 5712-5752:

distributeFactors() - this extracts each textword up to next ' ' via the following code on lines 5723-5726:

```
while (thisList.indexOf(' ')>0){  
  //alert('thisList now='+thisList)  
  thisList=deleteHead(' ',thisList)  
  thisFactor=head
```

The command "deleteHead" removes the head item on the list of health factors with code at lines 1847-1856:

```
function deleteHead(key,body){  
  var cutPos=0  
  cutPos=body.indexOf(key)+key.length  
  if (cutPos>1){  
    var headEnd=body.indexOf(key)  
    head=body.substring(0,headEnd)  
    body=body.substring(cutPos,body.length)  
  }else{endDelete=1}  
  return body  
}
```

D) In code lines 5648-5664:

checkDeltaSums() - calls the sort function, then compiles "allResults" and displays them in sorted order within a Results page.

Claim 125. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:  
ranking said words by a magnitude of change of said performance score after input of said word.

This ranking is accomplished by the same code cited above (code lines 5804-5863, 5762-5793, 5712-5752 and 5648-5664) as support for Claim 124. The actual ranking or sorting is accomplished by the sortRatings function on lines 5632-5646:

```
function sortRatings(){
  checkFreq()
  var tresult=0
  var tfood=""
  for (var j=1;j<365;j++){
    for (var i=0;i<365;i++){
      if (factor[i+1].length>2){
        if (factorDeltaSum[i]<factorDeltaSum[i+1])
          {tresult=factorDeltaSum[i+1]; factorDeltaSum[i+1]=factorDeltaSum[i];
        factorDeltaSum[i]=tresult;
        tfood=factor[i+1]; factor[i+1]=factor[i]; factor[i]=tfood}
      }else{i=1000}
    }
  }
```

```
}  
}
```

This sort function is called from the checkDeltaSums() function on line 5650.

126. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:  
determining at least one time period after input of said word;

Support for Claim 126 is provided in code lines 5560-5574. In this section of code and other sections, "delta" means "change" or "difference between". So the function "getDelta(..)" means get the difference between

```
function getDelta(factorIndex, factorTime){  
  //alert('Getting delta for factorIndex/factorTime: '+factorIndex+'/'+factorTime +'  
  factor='+factor[factorIndex])  
  timeValue=parseFloat(factorTime)  
  //search for next time and its delta  
  for (var i=1;i<366;i++){  
    tempTimeVal=parseFloat(perfTime[i])  
    //alert('timeValue='+timeValue+' perfTime[i]='+perfTime[i]+' tempTimeVal='+tempTimeVal)  
    if (timeValue<tempTimeVal){ //weve found the correct delta index  
      deltaIndex=i // i if delta is from present day to the next, or i-1 if its the previous day to the  
      present *****  
      i=367  
    } //end of weve found it block  
  } //end of i search loop
```

]

correlating said word and performance in said at least one time period.

Support is provide for this clause in code lines 5804-5863, 5762-5793, 5712-5752 and 5648-5664 and also code lines 5575-5607 which determine how the time period effect is implemented:

```
// ***** next is key statement to modify for effect types - delatIndex + 0 gives
points for next days rating if *****
if
(effectType=='Foods1DayAfterImprovement'){factorDeltaSum[factorIndex]=factorDeltaSum[fa
ctorIndex]+perfDelta[(deltaIndex-2)]}

if
(effectType=='FoodsDayOfImprovement'){factorDeltaSum[factorIndex]=factorDeltaSum[factor
Index]+perfDelta[(deltaIndex-1)]}
if
(effectType=='all'){factorDeltaSum[factorIndex]=factorDeltaSum[factorIndex]+perfDelta[(delta
Index-1)]}

if
(effectType=='Foods1DayBeforeImprovement'){factorDeltaSum[factorIndex]=factorDeltaSum[f
actorIndex]+perfDelta[(deltaIndex)]}
if
(effectType=='all'){factorDeltaSum[factorIndex]=factorDeltaSum[factorIndex]+perfDelta[(delta
Index)]}
```

```
if
(effectType=='Foods2DaysBeforeImprovement'){factorDeltaSum[factorIndex]=factorDeltaSum[
factorIndex]+perfDelta[(deltaIndex+1)]}
if
(effectType=='all'){factorDeltaSum[factorIndex]=factorDeltaSum[factorIndex]+perfDelta[(delta
Index+1)]}

if
((effectType=='FoodsOnBetterDays')||(effectType=='FoodsBeforeBetterDays')){factorDeltaSum
[factorIndex]=factorDeltaSum[factorIndex]+perfDelta[deltaIndex]}
```

Code lines 5596-5599 in particular are used to implement the 2 day interval used in the illustration of this analysis works in the specification.

```
if
(effectType=='Foods2DaysBeforeImprovement'){factorDeltaSum[factorIndex]=factorDeltaSum[
factorIndex]+perfDelta[(deltaIndex+1)]}
```

Claim 127. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:  
displaying a list of words input by said examinee; and  
displaying for each said word a correlation between said word and a change of said performance score health measure for said examinee.

Support for Claim 127 is provided in code lines 5666-5710, which is the function

"ResultsPage(allResults)" that generates the page of displaying all results.

128. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 126, wherein said correlation comprises a function including a time differential between an input of a word and a performance score.

Support for Claim 128 is provided in code lines 5560-5574, which is the function "getDelta(factorIndex, factorTime)" that recalls the change in the health measure (which may be a performance score change) over the time period selected for the analysis.

```
function getDelta(factorIndex, factorTime){  
  //alert('Getting delta for factorIndex/factorTime: '+factorIndex+'/'+factorTime +''  
  factor='+factor[factorIndex])  
  timeValue=parseFloat(factorTime)  
  //search for next time and its delta  
  for (var i=1;i<366;i++){  
    tempTimeVal=parseFloat(perfTime[i])  
    //alert('timeValue='+timeValue+' perfTime[i]='+perfTime[i]+' tempTimeVal='+tempTimeVal)  
    if (timeValue<tempTimeVal){ //weve found the correct delta index  
      deltaIndex=i // i if delta is from present day to the next, or i-1 if its the previous day to the  
      present *****  
      i=367  
    } //end of weve found it block  
  } //end of i search loop
```

129. The computer-based method for testing the cognitive performance of at least one examinee, according to Claim 125, further comprising:

providing said examinee with a list of words rated by their correlation with positive changes in performance; and

providing said examinee an explanation that words given highest ratings are most likely to represent beneficial foods and other health-related items.

Support for Claim 128 is provided in code lines 5666-5710, which is the function "ResultsPage(allResults)" that generates the page of displaying all results and also includes in the results page explanations of the meaning of the highest and lowest ranked words.

130. The computer-based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:

providing said examinee with means to obtain a health rating for any word entered >>>in health factor description text entry areas<<< at the time of measurement.

Support for Claim 130 is provided in code lines 5804-5863, 5762-5793, 5712-5752, 5648-5664 and 5575-5607, which together enable each health factor word to be assigned a health rating and enable the word and health rating to be displayed in ranked order.

131. The computer-based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:



providing first and second health ratings for each said word; and  
providing said examinee with means to obtain each said first and second health ratings.

Support for Claim 130 is provided in code lines 6082-6083 which create buttons that can be used by examinees and other users to optimize two different health measures.

```
<input type=button name='MM1' value=' Optimize Measure 1 ' onClick='insertData(1)'>&nbsp;
And also at 6086-7
<input type=button name='MM2' value=' Optimize Measure 2 ' onClick='insertData(3)'>
```

132. The computer-based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:

providing said examinee with means to search for said entered words with the highest and lowest health ratings.

Support for Claim 132 is provided in code lines 5804-5863, 5762-5793, 5712-5752, 5648-5664 and 5575-5607, which together enable each health factor word to be assigned a health rating and enable the word and health rating to be displayed in ranked order.

133. The computer-based method for testing the cognitive performance of at least one examinee, according to Claim 130, further comprising:

providing said examinee with means to obtain a health rating for any word combination by concatenating words within the combination.

Support for Claim 133 is provided in code on lines 5723-5726 which cause text strings up to the next space character to be extracted and thereafter treated as potential health factors that will be assigned a rank.

```
while (thisList.indexOf(' ')>0){  
  //alert('thisList now='+thisList)  
  thisList=deleteHead(' ',thisList)  
  thisFactor=head
```

Also code lines 5492-5495 give users instructions to use combinations of words linked by hyphens.

link compound names with dashes so they are not tallied separately. For example, enter \"peanut-butter\" so the optimization program does not think you have consumed \"peanut\" and \"butter\" separately.

134. A computer-based method for word analysis comprising:

providing a user with means to obtain a ranking of at least one previously-input word; and  
ranking said at least one word by a health or performance change subsequent to said input.

Support for Claim 132 is provided in code lines 5804-5863, 5762-5793, 5712-5752, 5648-5664 and 5575-5607, which together enable each health factor word to be assigned a health rating and enable the word and health rating to be displayed in ranked order.

135. The computer-based method for word analysis, according to Claim 134,

wherein said at least one word is selected from the group consisting of words describing health factors, performance factors, and cognitive factors.

Support for Claim 135 is provided in code lines 5915-5926 which provide instructions to examinees to enter words describing health factors, performance factors, and cognitive factors.

<h5>This page enables you to identify foods that may improve your health and your athletic and mental performance. To obtain this information, enter foods consumed each day together with health or performance data. Then press the "Optimize" button.

<p>

You can, for example, maximize the distance you are able to run, or minimize the amount of time required to jog a fixed distance. Or you can minimize blood sugar levels or the frequency of skipped heartbeats if you have diabetes or heart irregularity. Lists of foods and beverages consumed before your health or performance ratings have improved (or worsened) will be prepared for you to examine and discuss with professional health advisors.</h5>

Further support is also provided for Claim 133 within the instructions for formatting input 5495-5503 which describe details of input text formatting and refer to health ratings and performance scores.

Any measure of health or performance is acceptable. For health ratings we suggest a scale of 1 to 5 (1 terrible, 2 below average, 3 average, 4 better than average, 5 terrific).\n\nFor performance measures, enter only simple numbers. Any numeric measure of performance -- swimming time, number of push-ups, or your decision-speed or memory score each day -- is acceptable as long as

it is a single number. For example \"35\" and \"6.78\" are acceptable but \"35 secs.\" and \"25 ft 3 inches\" are not.

136. The computer-based method for word analysis, according to Claim 134, further comprising:

providing said user with means to select a time-period covered by the analysis.

Support for claim 136 is provided in code lines 5620-5296 which enable examinees or other users to select the time-period used during calculations that rank each previously health factor input word.

alert('Control panel options need not be adjusted by most visitors. They are provided to allow scientists to carefully examine results obtained at this web site.\n\nAvailable options allow you to identify: (i) Foods that improve or worsen your health or performance the same day you consume them. (ii) Foods that affect your health or performance on the next day. (iii) Foods that affect you two days after they are consumed.\n\nYou can also search for foods consumed when your health and performance were better than average, even if there was no improvement over previous days. To select the type of search you prefer, enter the appropriate number from the list below.\n\n1) \"Foods On Day After Improvement\" will identify foods that you consumed the day after days which were better than the previous day.\n\n2) \"Foods On Day Of Improvement\" will identify foods consumed on days you improved compared to the previous day.\n\n3) \"Foods On Better Days\" will find foods consumed on days you felt better than average even if there was no improvement over the previous day.\n\n4) \"Foods On Day Before Improvement\" will find foods consumed the day before improvement occurred.\n\n5) \"Foods On Day Before Better Days\" will find foods consumed the day before good days even if there was no improvement

over the previous day.\n\n6) \"Foods 2 Days Before Improvement\" will find foods consumed two days before good days when health-performance improved over the previous day.\n\n7) \"Combination Of The Above\" identifies foods which contribute to improvement on the same and on subsequent days (2, 3, 4, 5 and 6 combined).')

```
var tempVal=prompt('Please enter 1, 2, 3, 4, 5, 6 or 7 to indicate which type of benefit you wish to examine.','')
if ((tempVal!=null)&&(tempVal!="")){effectType=tempVal}
if (effectType=='1'){effectType='Foods1DayAfterImprovement'}
if (effectType=='2'){effectType='FoodsDayOfImprovement'}
if (effectType=='3'){effectType='FoodsOnBetterDays'}
if (effectType=='4'){effectType='Foods1DayBeforeImprovement'}
if (effectType=='5'){effectType='FoodsBeforeBetterDays'}
if (effectType=='6'){effectType='Foods2DaysBeforeImprovement'}
if (effectType=='7'){effectType='all'}
]
```

### **Objections to the Drawings.**

The drawings were objected to under 37 CFR 1.83(a) as failing to show every claimed feature. In response, additional drawings are herein presented to show each claimed feature. Set for the below is a correspondence between the Claims and the Figures. The Figures do not comprise "new matter."

#### **Claim 117**

117. A computer based method for testing the cognitive performance of at least one examinee comprising:

providing to at least one examinee at least one measurement-session

FIG 5-8

comprising a plurality of response-series comprising a plurality of responses; and

FIG 5-8A Step 47

providing a computer-generated instruction that said examinee respond rapidly to a test stimulus so that at least a minimum number of errors is made.

FIG 7E Step 38

118. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, wherein said instruction is provided prior to a response-series.

FIG 5 Step 1

119. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, further comprising:

determining a number of errors made by said examinee in a response-series; and

FIG 7E Step 37

displaying a computer-generated instruction to increase a response speed of said examinee when said number of errors is less than a minimum number of errors within said response-series.

FIG. 7E Step 38

120. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, wherein said response-series comprises from about 20 to about 40 responses.

FIG. 7D Step 34

121. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, wherein said minimum number of errors is an integer selected from the group consisting of 1,2,3,4, and 5.

FIG. 7E Step 37

122. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 117, wherein said minimum number of errors is from about 10% to about 20% of said responses.

FIG. 7E Step 37

123. The computer-based method for measuring the cognitive performance of at least one examinee, according to Claim 117, further comprising displaying a warning message when a response-series includes less than said minimum number of errors, wherein said warning instructs said examinee to proceed more rapidly during remaining response-series within said measurement-session.

FIG. 7E Step 38

124. A computer based method for testing the cognitive performance of at least one examinee comprising:  
reading at least one word input by an examinee;

FIG 5 Step 2

determining a performance score by said examinee; and

FIG 7C Step 31



correlating said score with said at least one health-related word.

FIG 9A Steps 61-69

125. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:

ranking said words by a magnitude of change of said performance score after input of said word.

FIG 9C Steps 68-72

126. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:

determining at least one time period after input of said word;

FIG 9A Steps 61-62

correlating said word and performance in said at least one time period.

FIG 9C Steps 68-69

127. The computer based method for testing the cognitive performance of at least one examinee, according to Claim 124, further comprising:  
  
displaying a list of words input by said examinee; and

FIG 9D Step 71

displaying for each said word a correlation between said word and a change of said performance score for said examinee.

FIG 9D Step 71

128. The computer based method for measuring the cognitive performance of at least one examinee, according to Claim 126, wherein said correlation comprises a function including a time differential between an input of a word and a performance score.

FIG 9C Step 68

129. The computer-based method for measuring the cognitive performance of at least one examinee, according to Claim 125, further comprising:

providing said examinee with a list of words rated by their correlation with positive changes in performance; and

FIG 9D Step 71

providing said examinee an explanation that words given highest ratings are most likely to represent beneficial foods and other health-related items.

FIG 9D Step 72

130. The computer-based method for measuring the cognitive performance of at least one examinee, according to Claim 124, further comprising:

providing said examinee with means to obtain a health rating for any word entered in health factor and health description text entry areas at the time of measurement.

FIG 9 All steps

131. The computer-based method for measuring the cognitive performance of at least one examinee, according to Claim 124, further comprising:

providing first and second health ratings for each said word; and

FIG 9B Step 63 and FIG 9

FIG 9D Step 75

providing said examinee with means to obtain each said first and second health ratings.

FIG 9 All steps

132. The computer-based method for measuring the cognitive performance of at least one examinee, according to Claim 124, further comprising:

providing said examinee with means to search for said entered words with the highest and lowest health ratings.

FIG 9D Step 71

133. The computer-based method for measuring the cognitive performance of at least one examinee, according to Claim 130, further comprising:

providing said examinee with means to obtain a health rating for any word combination by concatenating words within the combination.

FIG 9B Step 66

134. A computer-based method for word analysis comprising:

providing at least one user with means to obtain a ranking of any previously-input word; and

FIG 9 All steps

ranking said at least two words in accordance with changes subsequent to each occurrence of said input words.

FIG 9 Steps 68-71

135. The computer-based method for word analysis, according to Claim 134, further comprising:

providing said user with means to select a time-interval that will be employed during calculations applied to each occurrence of each said input word when changes are summed and then adjusted to obtain a rank for each said word.

FIG 9A Step 61

136. The computer-based method for word analysis, according to Claim 134, further comprising:

providing said user with means to rank each word in accordance with the pattern of subsequent changes.

FIG 9A Steps 61-71

**Rejections Under 35 U.S.C. § 102:**

Claims 117-132 were rejected under 35 U.S.C. § 102(e) as being anticipated by Darby (US 2002/0192624).

Claims 133-136 were rejected under 35 U.S.C. § 102(e) as being anticipated by Jenkins (6,669,479).

Rejection under 35 U.S.C. § 102 requires the prior art disclose each and every recitation of the claimed invention.<sup>1</sup> In determining anticipation, no claim recitation may be ignored.<sup>2</sup> Anticipation requires the disclosure, in a prior art reference, of each and every recitation as set forth in the claims.<sup>3</sup> There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. § 102.<sup>4</sup> The evidentiary record fails to teach each recitation of the present invention in view of the silence of each of Darby and Jenkins regarding the inventive method of encouraging greater response speed, so that a predetermined minimum number of errors are committed during each subsection of each measurement session.

Darby et al. sound an error buzzer when errors occur but do not have a minimum acceptable number of errors, nor does Darby encourage greater response speed so that errors occur as a consequent of very rapid responses. Jenkins does not mention errors at all and thus does not anticipate the unique error treatment of this application. Moreover, none of these prior patents provides users with means to relate a variety of factors to health and performances

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<sup>1</sup> See MPEP § 706.02.

<sup>2</sup> See *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 1871 (Fed. Cir. 1990).

<sup>3</sup> See *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985); *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 1 USPQ2d 1081 (Fed. Cir. 1986); and *Akzo N.V. v. U.S. International Trade Commissioner*, 1 USPQ2d 1241 (Fed. Cir. 1986).

<sup>4</sup> See *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (CAFC 1991) and *Studiengesellschaft Kohle GmbH v. Dart Industries*, 220 USPQ 841 (CAFC 1984).

changes, and so they do not anticipate the kind of time-interval-based word/health factor ranking that is a second aspect of the present application.

**Conclusion:**

In view of the above, consideration and allowance are, therefore, respectfully solicited.

Accordingly, it is respectfully requested that the foregoing amendments be entered, that the application as so amended receive an examination on the merits, and that the claims as now presented receive an early allowance.

In the event the Examiner believes an interview might serve to advance the prosecution of this application in any way, the undersigned attorney is available at the telephone number noted below.

The Commissioner is hereby authorized to charge any fees or credit any overpayment associated with this communication, including any extension fees or fees for the net addition of claims, to Deposit Account No. 02-2135.

Respectfully submitted,  
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